

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE:

THE HON'BLE MR JUSTICE M.F.SALDANHA

W. P. NO. 13004 / 1996

BETWEEN:

Thippanna S/o
Bhimarao Hanchate,
age: 49 years
Occ: Agriculture & Business,
R/o: Shorapur, Gulbarga District. ... PETITIONER

(By M/s.Ashok Patil & K.Subramanya, Advocate.,)

A N D:

1. The Assistant Commissioner
at Yadgir, Yadgir,
Gulbarga District.
2. The Secretary
Karnataka Appellate Tribunal
M.S.Buildings,
Bangalore. ... RESPONDENTS

(By Smt.M.R.Shanthakumari, HCGP.,)

Writ Petition filed under Articles 226 and 227
of the Constitution of India, praying to set aside
the order at Annexure-B dt. 30-6-95 and set aside
the order at Annexure-A dt. 29-5-93 etc.,

This Petition coming on for preliminary
hearing this day, the Court made the following:-

ORDER



WIS

O R D E R

I have heard the petitioner's learned Advocate and the learned Govt. Advocate. I have also perused the orders passed as also the record of the case in some detail. The petitioner's learned Advocate has inter-alia advanced one submission which will have to be upheld namely that the petitioner in this case was an Income-tax payer and, he has produced his Income-tax return for the relevant year. The Tribunal has disregarded it and ^{has} ~~gone~~ on the basis of approximation because the petitioner had stated that his income is 10% of his turnover which comes to over Rs.60,000/- ^{on} Undoubtedly, there was a fault ^{on} the part of the petitioner who should have satisfied the Authority on the basis of income for the said years in question and ~~consequently~~, the petitioner ought to have produced his assessment orders which would have conclusively set the matter at rest. It is ~~because~~ of the default on the part of the petitioner, that some other criteria was adopted but it would be difficult to uphold the order. Even the learned Govt. Advocate has submitted that

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the basis on which the Tribunal has proceeded is unjustifiable. In those of the cases where a party is an Income-tax payer, where returns are filed and where the assessments are ~~not~~ completed, the assessment order would be conclusive proof of the income as acceptable to the Government. The learned Advocate submits that irrespective of what happened, since on the basis of income figures alone the sale in his client's favour has been nullified, that he should be afforded a fresh opportunity of producing the relevant documents and such other evidence as he is in a position to satisfy the Authority that his income was below Rs.50,000/= since the consequences to the petitioner would be serious if he is not allowed to do this.

2. I do feel that an opportunity should be afforded. However, the petitioner will have to make amends for the gross default in not having produced the requisite evidence at the point of time when it ought to have been done in the first instance and the petitioner will therefore have to pay costs that are quantified at Rs.2,000/-. It is directed that these costs be deposited in this Court within a period of 8 weeks from today

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and that the receipt in respect of the deposit be produced before the Assistant Commissioner in question.

3. As a necessary consequence, both the earlier orders are set aside and the Assistant Commissioner is directed to hear the party de novo and pass fresh orders. For this purpose, the petitioner shall appear before the Assistant Commissioner on 10-8-98 when the Assistant Commissioner shall fix a date for the hearing of the case. The Assistant Commissioner shall thereafter complete the hearing and pass orders within an outer limit of six months from that date.

4. The Petition accordingly succeeds. In the circumstances of the case, the petitioner shall pay costs quantified at Rs.2,000/-.

Sd/-
JUDGE

MSU/*150698

